

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE NATIONAL PRESCRIPTION
OPIATE LITIGATION

MDL No. 2804

This document relates to:
Case No. 1:18-op-46326-DAP

Case No. 17-md-2804

THE MONTGOMERY COUNTY BOARD OF
COUNTY COMMISSIONERS and THE STATE
OF OHIO *EX REL.* MATHIAS H. HECK, JR.,
PROSECUTING ATTORNEY,

Judge Dan Aaron Polster

Plaintiff,

vs.

CARDINAL HEALTH, INC. et al.,

Defendants.

**PLAINTIFF'S SECOND SUPPLEMENTAL RESPONSES AND OBJECTIONS TO THE
PHARMACY DEFENDANTS' FIRST SET OF INTERROGATORIES
(INTERROGATORY No. 1)**

Pursuant to Federal Rules of Civil Procedure 26 and 33, as well as the local rules and orders of this Court, the Montgomery County Board of County Commissioners ("Plaintiff" or "County") hereby responds to the Pharmacy Defendants (collectively "Defendants" or "Chain Pharmacies") First Set of Interrogatories (the "Interrogatories" and, each individually, an "Interrogatory"), as follows:

OBJECTIONS

The following objections apply to each Interrogatory. To the extent that certain specific objections are cited in response to an individual Interrogatory, those specific objections are

provided because they are applicable to that specific Interrogatory and are not a waiver of the objections applicable to information falling within the scope of such Interrogatory.

1. Plaintiff objects to each Interrogatory to the extent it is overly broad, vague, unduly burdensome, seeks information that is not relevant to any party's claim or defense, or seeks to impose obligations or require actions beyond those required by the Rules of Civil Procedure, the ESI Protocol entered in this MDL or the Local Rules of the United States District Court of the Northern District of Ohio.

2. These responses are made solely for the purpose of and in relation to this action. Each answer is given subject to all appropriate objections, which would require the exclusion at trial of any statement contained or document provided herein. All such objections and the grounds therefore are hereby reserved.

3. No admission of any nature whatsoever is to be implied or inferred in these responses. The fact that any of the Interrogatories herein may have been answered should not be taken as an admission or a concession of the existence of any facts set forth or assumed by the Interrogatories, or that such answer constitutes evidence of any fact thus set forth or assumed.

4. Plaintiff objects to each Interrogatory to the extent Plaintiff has not yet received adequate discovery from Defendants. As a result, Plaintiff has not completed its investigation of the facts relating to this action and have not yet completed its preparation for trial. Accordingly, these responses are necessarily limited in nature, and reflect only that information known to Plaintiff at this time.

5. Plaintiff objects to each Interrogatory to the extent it purports to require Plaintiff to produce documents that are in the public domain or otherwise available to the Chain Pharmacies as easily from other sources as from Plaintiff.

6. Plaintiff objects to each Interrogatory to the extent it seeks information more appropriately obtained through other methods of discovery.

7. Plaintiff objects to each Interrogatory to the extent that it seeks information that is privileged or confidential or that is protected from discovery as attorney work product and attorney-client communication, information gathered or prepared in anticipation of litigation, the public interest privilege, law enforcement privilege, public official privilege, and/or by any other privilege or immunity from disclosure (collectively, “Privileged Information”).

8. Whenever in the responses Plaintiff employs the phrase “subject to and without waiving all objections,” Plaintiff is responding to the Interrogatory as it may be narrowed by its general and specific objections and without waiver of any objection.

9. Any response stating that Plaintiff will produce documents shall be deemed followed by the phrase “as are within Plaintiff’s possession, custody, or control” and which constitute the records of, or that belong to, the County or its departments.

10. Plaintiff objects to each Interrogatory to the extent that it implies the existence of facts or circumstances that do not or did not exist, and to the extent that it states or assumes legal conclusions. In providing these objections and responses, Plaintiff does not admit the factual or legal premise of any Interrogatory.

11. Plaintiff objects to each Interrogatory to the extent it seeks information that is not information belonging to the County within Plaintiff’s possession, custody, or control, seek documents that do not already exist, or which purport to require a response by Plaintiff on behalf of an entity or individual other than Plaintiff. Plaintiff’s responses may reference documents and/or information provided by other parties in this MDL. Plaintiff’s reference to such

documents is not intended to signify that Plaintiff maintains possession, custody, or control of these documents or that they belong to the County.

12. Plaintiff objects to each Interrogatory to the extent it prematurely seeks expert opinion(s). All expert opinions will be disclosed on the dates set forth in the Case Management Order.

13. Plaintiff reserves the right to supplement, revise, correct, or clarify its responses and objections in the event that additional information becomes available.

14. Plaintiff objects to the Interrogatories, and to the Definitions and Instructions included with this set of Interrogatories, to the extent that it seeks discovery that is not relevant to any party's claims or defenses.

15. Plaintiff objects to the Interrogatories, and to the Definitions and Instructions included with this set of Interrogatories, to the extent that they are overly burdensome and not proportional to the needs of the case, considering the importance of the issues at stake, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

16. Plaintiff objects to these Interrogatories, and to the Definitions and Instructions included with this set of Interrogatories, because they seek discovery that is not relevant to a claim or defense or proportional to the needs of the case.

17. Plaintiff objects to these Interrogatories to the extent they seek protected health information.

18. Plaintiff objects to these Interrogatories to the extent that they include multiple subparts. Plaintiff further objects to these Interrogatories on the grounds that they are

individually and collectively overbroad and unduly burdensome and seek discovery that is not relevant to any party's claims or defenses and not proportional to the needs of the case. To the extent that Plaintiff agrees to respond to these Interrogatories, Plaintiff is agreeing to produce only the information it identifies in its Response.

19. Plaintiff objects to the Interrogatories, and to the Definitions and Instructions included with this set of Interrogatories, to the extent that they seek information that: (a) is in Defendants' possession, custody, or control; (b) is equally or more readily available from sources other than Plaintiff; (c) can be obtained from other sources that are more convenient, less burdensome, and/or less expensive than requiring Plaintiff to provide the information; (d) is not reasonably accessible to Plaintiff; and/or is publicly available to Defendants. With regard to any Response that Plaintiff provides, Plaintiff's Response will be limited to relevant, responsive, and non-privileged information in its possession, custody, or control of, and belonging to, the County located after a reasonable search that is proportional to the needs of the case.

20. Plaintiff objects to these Interrogatories to the extent that they contain terms that are not defined or terms that are defined in a vague, ambiguous, or unintelligible manner.

21. Plaintiff objects to these Interrogatories, and to the Interrogatories' Definitions and Instructions, to the extent that any Interrogatory, Definition, or Instruction: (a) is unduly burdensome, oppressive, overbroad, ambiguous, confusing, or vague; (b) is duplicative or unreasonably cumulative of other discovery in this investigation; or (c) calls for Plaintiff to draw a legal conclusion in order to respond.

22. Plaintiff objects to the Interrogatories that purport to require that Plaintiff provide discovery with regard to "any," "each," "every," "all," or similar all-encompassing wording, on the grounds that such Interrogatories are overly broad, unduly burdensome, seek discovery that is

not relevant to any party's claims or defenses, not proportional to the needs of the case, and beyond the scope of permissible discovery, particularly at this stage of the proceeding.

23. Plaintiff objects to the Interrogatories to the extent that they seek premature expert discovery or disclosure of expert opinions and go beyond the scope of permissible expert discovery under the Discovery Rules. Plaintiff will provide expert discovery and disclosures in compliance with the Discovery Rules but assumes no further obligation.

24. Plaintiff's investigation and discovery are ongoing as to all matters referred to in these Objections and Responses to Defendants' Interrogatories. Plaintiff's Responses are based upon information that has been collected and reviewed to date for the purpose of responding to these Interrogatories, and they are not prepared from the personal knowledge of any single individual. Plaintiff reserves the right to amend and supplement these Responses as discovery and this litigation proceed.

25. Responding to these Interrogatories does not waive Plaintiff's rights to prove its claims, in whole or in part, through aggregate proof or statistical evidence. Plaintiff reserves its rights to assert that the use of any individualized prescription information is inappropriate, irrelevant, or inadmissible. *See* Report and Recommendation, *In re: National Prescription Opiate Litig.*, Case No. 1:17-MD-2804 (DAP), Doc. 1025 (N.D. Ohio) (Magistrate Judge David A. Ruiz); *In re Neurontin Litigation*, 712 F.3d 21, 29-39 (1st Cir. 2013); *United States v. Life Care Centers of Am., Inc.*, 114 F. Supp. 3d 549 (E.D. Tenn. 2014); *United States v. Life Care Centers of Am., Inc.*, 1:08-CV-251, 2015 WL 10987029, at *3 (E.D. Tenn. Feb. 18, 2015); Order Regarding Discovery Ruling No. 5, *In re: National Prescription Opiate Litig.*, Case No. 1:17-MD- 2804 (DAP), Doc. 1047 (N.D. Ohio). In short, by responding, Plaintiff does not concede that this information is relevant or admissible.

26. Plaintiff objects to these Interrogatories to the extent they seek to compel individual proof, or to compel Plaintiff to use any particular method of proof, at trial.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. Plaintiff objects to the Definitions of “Plaintiff” and “You” on the grounds that they are overly broad, vague, and seek to extend the requests beyond the Plaintiff entities that are named as Plaintiff and represented by the Prosecutor’s Office in this litigation. For purposes of its Responses, Plaintiff will consider “Plaintiff” and “You” to mean the County and will respond with regard to information and documents that are records of, or belong to, the County or its departments.

2. Plaintiff objects to the Definitions of “Document” and “Communication” to the extent that it seeks to impose obligations on Plaintiff beyond those imposed by the Discovery Rules. Plaintiff will respond in accordance with the applicable Discovery Rules and assumes no further obligation.

3. Plaintiff objects to the Definition of “related to” or “relating to” to the extent that the Definition goes beyond common usage of the term, results in Interrogatories that are overbroad, vague, ambiguous, and unduly burdensome and, using Defendants’ Definition of “related to” or “relating to,” seeks discovery that is not relevant to any party’s claims or defenses, nor proportional to the needs of the case, purports to impose obligations or burdens on Plaintiff that go beyond the Discovery Rules, and makes demands for information and documents that are not in Plaintiff’s possession, custody, or control or records that belong to the County. Plaintiff further objects to this Definition to the extent that it seeks to add requirements to an Interrogatory not otherwise stated in the actual Interrogatory and creates a compound Interrogatory. Plaintiff will respond to the Interrogatory as propounded, subject to its Objections,

and does not agree to respond with regard to additional requirements or questions that Plaintiff purports to impose through their Definition of “related to” or “relating to.”

4. Plaintiff objects to the Definition of “Relevant Time Period” to the extent it seeks to impose obligations on the Plaintiff beyond those outlined in *Discovery Ruling 3* (Doc #: 762) (Filed: 07/1//18). Plaintiff will respond in accordance with *Discovery Ruling 3* and assumes no further obligation.

5. Plaintiff objects to Definitions 1 through 21 and Instructions 1 through 7 on the grounds that they are overly burdensome and seek to impose obligations or burdens on Plaintiff that go beyond those imposed by the Discovery Rules. Plaintiff will comply with the Discovery Rules.

NON-WAIVER

1. Plaintiff’s responses are made without waiving its right to object (on the grounds of relevancy, hearsay, materiality, competency or any other ground) to the use of its responses in any subsequent stage or proceeding in this action or any other action.

2. If Plaintiff, in response to any Interrogatory, inadvertently produces information that is or could be the subject of objections stated herein, such information is not intended to be, nor is it deemed to be, a waiver of the objections with respect to such information produced or withheld.

3. Plaintiff’s failure to object to a specific Interrogatory on a particular ground or grounds shall not be construed as a waiver of its rights to object on any additional grounds.

4. Plaintiff responds herein based upon information it has been reasonably able to gather at the time of making these responses. Plaintiff reserves its right to amend and/or to

supplement its objections and responses to the Interrogatories, consistent with further investigation and discovery.

SPECIFIC RESPONSES AND OBJECTIONS

Interrogatory No. 1:

Identify each prescription for a Prescription Opioid or Cocktail Medication that you contend was diverted.

Response to Interrogatory No. 1:

Plaintiff is not obligated to prove each prescription that was diverted to prove a public nuisance claim and objects to this interrogatory to the extent it implies this is Plaintiff's obligation or to any argument by Defendants that Plaintiff has such an obligation. By responding to this Interrogatory, Plaintiff does not concede that it is obligated to provide individualized proof of diversion of each and every individual prescription to establish its public nuisance claim or even concede that it would be possible to do so. Responding to this Interrogatory does not waive Plaintiff's rights to prove its claims, in whole or in part, through aggregate proof or statistical evidence or to offer expert testimony about the extent or likelihood of diversion as a result of Defendants' failures. *See* Report and Recommendation, *In re: National Prescription Opiate Litig.*, Case No. 1:17-MD-2804 (DAP), Doc. 1025 (N.D. Ohio) (Magistrate Judge David A. Ruiz); *In re Neurontin Litigation*, 712 F.3d 21, 29-39 (1st Cir. 2013); *United States v. Life Care Centers of Am., Inc.*, 114 F. Supp. 3d 549 (E.D. Tenn. 2014); *United States v. Life Care Centers of Am., Inc.*, 1:08-CV-251, 2015 WL 10987029, at *3 (E.D. Tenn. Feb. 18, 2015); Order Regarding Discovery Ruling No. 5, *In re: National Prescription Opiate Litig.*, Case No. 1:17-MD-2804 (DAP), Doc. 1047 (N.D. Ohio). In short, by responding, Plaintiff does not concede that information about any particular prescription and whether it was actually diverted is relevant or admissible.

In addition to its General Objections, Plaintiff objects to this Interrogatory because it is overly broad, unduly burdensome, in that it seeks to have Plaintiff identify each prescription individually that was diverted when Defendants were supplying millions of prescriptions that should have triggered red flags for diversion and should not have flowed into the community unchecked. The burden of tracing each of these inappropriately dispensed pills to its end point is disproportional to the needs of the case, especially given a public nuisance claim does not require this type of individualized proof.

Plaintiff objects to this Interrogatory as calling for premature disclosure of expert opinion. Discovery into this topic is ongoing and will be the subject of fully-supported and detailed expert witness opinion(s) that will be disclosed in accordance with the CMO in this case and the Federal Rules of Civil Procedure.

Plaintiff further objects to this Interrogatory because it seeks documents or information that: (a) are in Defendants' possession, custody, or control; (b) are equally or more readily available from sources other than Plaintiff; (c) can be obtained from other sources that are more convenient, less burdensome, and/or less expensive than requiring Plaintiff to provide the information; and (d) are not reasonably accessible to Plaintiff. Plaintiff is not claiming any damages on behalf an individual or group of individuals who were harmed by Defendants' conduct and the public nuisance claim does not require a showing that any third-party individuals were harmed.

Additionally, Plaintiff objects to this Interrogatory as an improperly broad contention interrogatory or one that is better answered at the close of fact and expert discovery. *See* F.R.C.P. 26.

Subject to and without waiving its objections, Plaintiff refers Defendants to the supplemental pleading served May 19, 2021 and notes that Plaintiff will comply with Section D.2 of the CMO in this case. Additionally, Plaintiff points Defendants to its expert reports which will be produced in accordance with the CMO in this case.

Additionally, Plaintiff intends to show that significant numbers of prescriptions filled by Defendants were diverted, but is not obligated to identify, or even to know, each and every such prescription; indeed it is not possible to know every prescription that was diverted. Plaintiff has provided Defendants detailed analysis of each prescription that should have been flagged for potential diversion and that Defendants failed to investigate before it flowed into Plaintiff's community, leading to actual diversion. Plaintiff notes that these particular prescriptions were at especially high risk of diversion, including prescriptions flagged in Plaintiff's red flag analysis, prescriptions flagged by Defendants' own systems and never investigated and cleared by Defendants, and prescriptions dispensed that were written by doctors identified by Defendants as high volume or problematic prescribers without proper due diligence. Plaintiff reserves the right to refer to all such prescriptions as evidence of Defendants' failure to prevent diversion and will provide expert testimony about how Defendants' actions lead to diversion in the community. Additionally, Plaintiff may point to any prescription by prescribing doctors listed in Defendants' own documents as generating red flags for diversion or suspicious activity, or prescriptions or in any state or federal criminal or regulatory enforcement actions, including any actions by State Boards of Medicine or Pharmacy. In addition, Plaintiff may point at trial to examples of diverted prescriptions from the following health care providers:

- David Kirkwood
- Morris Brown
- Han Yang
- John Dahlsten

- Niles Jobalia
- Darrell Hall
- Victor Georgescu
- Daniel Brumfield
- Richard Sievers
- Bruce Kay
- Noel Watson
- Laila Goma
- Stephen House
- John Moore
- Julia Lucente
- James Laub
- Margaret Edwards
- Raymond Noshang
- Ari Ikeme
- James Lundeen
- Anita Swell
- Richard Sievers
- Corena Smith

Plaintiff is not obligated to identify every prescription from these, or other prescribers that were diverted. Nevertheless, examples of the types of prescriptions Plaintiff may use or highlight at trial to illustrate prescriptions that were more likely than not diverted are identified in Exhibit A, which is based on the information currently available to Plaintiff. Plaintiff reserves the right to supplement and amend this response as discovery proceeds. Plaintiff also reserved the right to identify additional prescriptions, including through expert discovery.

Dated: May 20, 2022

Respectfully submitted,

By: /s/ Lisa Saltzburg
Lisa Saltzburg

MOTLEY RICE, LLC

Linda Singer
Elizabeth Smith

Motley Rice LLC
401 9th Street NW
Suite 1001
Washington, DC 20004
(202) 386-9626
lsinger@motleyrice.com
esmith@motleyrice.com
Attorneys for Montgomery County

Michael Elsner
Lisa Saltzburg
Motley Rice LLC
28 Bridgeside Blvd.
Mount Pleasant, South Carolina 29464
(843) 216-9000
melsner@motleyrice.com
lsaltzburg@motleyrice.com
Attorneys for Montgomery County

Mathias H. Heck, Jr.
Montgomery County Prosecuting Attorney
301 West Third Street
P.O. Box 972
Dayton, Ohio 45422
Telephone: (937) 225-5599
Fax Number: (937) 225-4822
E-mail: heckm@mcOhio.org
Attorney for Montgomery County

Ward C. Barrentine
Chief Assistant Prosecuting Attorney - Civil
Division
Montgomery County Prosecutor's Office
301 West Third Street
4th Floor, Suite 461
Dayton, Ohio 45422
Telephone: (937) 496-7797
E-mail: BarrentinW@mcOhio.org
Attorney for Montgomery County

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2022, I caused the foregoing to be served via electronic mail on Defendants via Tracks6to10Defendants@bbhps.com.

By: /s/ Lisa Saltzburg
Lisa Saltzburg

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466	467	468	469	470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490	491	492	493	494	495	496	497	498	499	500	501	502	503	504	505	506	507	508	509	510	511	512	513	514	515	516	517	518	519	520	521	522	523	524	525	526	527	528	529	530	531	532	533	534	535	536	537	538	539	540	541	542	543	544	545	546	547	548	549	550	551	552	553	554	555	556	557	558	559	560	561	562	563	564	565	566	567	568	569	570	571	572	573	574	575	576	577	578	579	580	581	582	583	584	585	586	587	588	589	590	591	592	593	594	595	596	597	598	599	600	601	602	603	604	605	606	607	608	609	610	611	612	613	614	615	616	617	618	619	620	621	622	623	624	625	626	627	628	629	630	631	632	633	634	635	636	637	638	639	640	641	642	643	644	645	646	647	648	649	650	651	652	653	654	655	656	657	658	659	660	661	662	663	664	665	666	667	668	669	670	671	672	673	674	675	676	677	678	679	680	681	682	683	684	685	686	687	688	689	690	691	692	693	694	695	696	697	698	699	700	701	702	703	704	705	706	707	708	709	710	711	712	713	714	715	716	717	718	719	720	721	722	723	724	725	726	727	728	729	730	731	732	733	734	735	736	737	738	739	740	741	742	743	744	745	746	747	748	749	750	751	752	753	754	755	756	757	758	759	760	761	762	763	764	765	766	767	768	769	770	771	772	773	774	775	776	777	778	779	780	781	782	783	784	785	786	787	788	789	790	791	792	793	794	795	796	797	798	799	800	801	802	803	804	805	806	807	808	809	810	811	812	813	814	815	816	817	818	819	820	821	822	823	824	825	826	827	828	829	830	831	832	833	834	835	836	837	838	839	840	841	842	843	844	845	846	847	848	849	850	851	852	853	854	855	856	857	858	859	860	861	862	863	864	865	866	867	868	869	870	871	872	873	874	875	876	877	878	879	880	881	882	883	884	885	886	887	888	889	890	891	892	893	894	895	896	897	898	899	900	901	902	903	904	905	906	907	908	909	910	911	912	913	914	915	916	917	918	919	920	921	922	923	924	925	926	927	928	929	930	931	932	933	934	935	936	937	938	939	940	941	942	943	944	945	946	947	948	949	950	951	952	953	954	955	956	957	958	959	960	961	962	963	964	965	966	967	968	969	970	971	972	973	974	975	976	977	978	979	980	981	982	983	984	985	986	987	988	989	990	991	992	993	994	995	996	997	998	999	1000	1001	1002	1003	1004	1005	1006	1007	1008	1009	1010	1011	1012	1013	1014	1015	1016	1017	1018	1019	1020	1021	1022	1023	1024	1025	1026	1027	1028	1029	1030	1031	1032	1033	1034	1035	1036	1037	1038	1039	1040	1041	1042	1043	1044	1045	1046	1047	1048	1049	1050	1051	1052	1053	1054	1055	1056	1057	1058	1059	1060	1061	1062	1063	1064	1065	1066	1067	1068	1069	1070	1071	1072	1073	1074	1075	1076	1077	1078	1079	1080	1081	1082	1083	1084	1085	1086	1087	1088	1089	1090	1091	1092	1093	1094	1095	1096	1097	1098	1099	1100	1101	1102	1103	1104	1105	1106	1107	1108	1109	1110	1111	1112	1113	1114	1115	1116	1117	1118	1119	1120	1121	1122	1123	1124	1125	1126	1127	1128	1129	1130	1131	1132	1133	1134	1135	1136	1137	1138	1139	1140	1141	1142	1143	1144	1145	1146	1147	1148	1149	1150	1151	1152	1153	1154	1155	1156	1157	1158	1159	1160	1161	1162	1163	1164	1165	1166	1167	1168	1169	1170	1171	1172	1173	1174	1175	1176	1177	1178	1179	1180	1181	1182	1183	1184	1185	1186	1187	1188	1189	1190	1191	1192	1193	1194	1195	1196	1197	1198	1199	1200	1201	1202	1203	1204	1205	1206	1207	1208	1209	1210	1211	1212	1213	1214	1215	1216	1217	1218	1219	1220	1221	1222	1223	1224	1225	1226	1227	1228	1229	1230	1231	1232	1233	1234	1235	1236	1237	1238	1239	1240	1241	1242	1243	1244	1245	1246	1247	1248	1249	1250	1251	1252	1253	1254	1255	1256	1257	1258	1259	1260	1261	1262	1263	1264	1265	1266	1267	1268	1269	1270	1271	1272	1273	1274	1275	1276	1277	1278	1279	1280	1281	1282	1283	1284	1285	1286	1287	1288	1289	1290	1291	1292	1293	1294	1295	1296	1297	1298	1299	1300	1301	1302	1303	1304	1305	1306	1307	1308	1309	1310	1311	1312	1313	1314	1315	1316	1317	1318	1319	1320	1321	1322	1323	1324	1325	1326	1327	1328	1329	1330	1331	1332	1333	1334	1335	1336	1337	1338	1339	1340	1341	1342	1343	1344	1345	1346	1347	1348	1349	1350	1351	1352	1353	1354	1355	1356	1357	1358	1359	1360	1361	1362	1363	1364	1365	1366	1367	1368	1369	1370	1371	1372	1373	1374	1375	1376	1377	1378	1379	1380	1381	1382	1383	1384	1385	1386	1387	1388	1389	1390	1391	1392	1393	1394	1395	1396	1397	1398	1399	1400	1401	1402	1403	1404	1405	1406	1407	1408	1409	1410	1411	1412	1413	1414	1415	1416	1417	1418	1419	1420	1421	1422	1423	1424	1425	1426	1427	1428	1429	1430	1431	1432	1433	1434	1435	1436	1437	1438	1439	1440	1441	1442	1443	1444	1445	1446	1447	1448	1449	1450	1451	1452	1453	1454	1455	1456	1457	1458	1459	1460	1461	1462	1463	1464	1465	1466	1467	1468	1469	1470	1471	1472	1473	1474	1475	1476	1477	1478	1479	1480	1481	1482	1483	1484	1485	1486	
---	---	---	---	---	---	---	---	---	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	--

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE NATIONAL PRESCRIPTION
OPIATE LITIGATION

This document relates to:
Case No. 1:18-op-46326-DAP

THE MONTGOMERY COUNTY BOARD OF
COUNTY COMMISSIONERS and THE STATE
OF OHIO *EX REL.* MATHIAS H. HECK, JR.,
PROSECUTING ATTORNEY,

Plaintiff,

vs.

CARDINAL HEALTH, INC. et al.,

Defendants.

MDL No. 2804

Case No. 17-md-2804

Judge Dan Aaron Polster

**PLAINTIFF’S SECOND SUPPLEMENTAL RESPONSES AND OBJECTIONS TO
INTERROGATORIES FIVE AND SIX OF PHARMACY DEFENDANTS’ SECOND SET
OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33, as well as the local rules and orders of this Court, the Montgomery County Board of County Commissioners (“Plaintiff” or “County”) hereby offers this amended response to the Pharmacy Defendants (collectively “Defendants” or “Chain Pharmacies”) Second Set of Interrogatories Requests 5 and 6 (the “Interrogatories” and, each individually, an “Interrogatory”), as follows:

OBJECTIONS

Plaintiff's incorporate the Objections previously submitted on November 15, 2021 with Plaintiff's Responses and Objections to the Pharmacy Defendants' Second Set of Interrogatories.

NON-WAIVER

1. Plaintiff's responses are made without waiving its right to object (on the grounds of relevancy, hearsay, materiality, competency or any other ground) to the use of its responses in any subsequent stage or proceeding in this action or any other action.

2. If Plaintiff, in response to any Interrogatory, inadvertently produces information that is or could be the subject of objections stated herein, such information is not intended to be, nor is it deemed to be, a waiver of the objections with respect to such information produced or withheld.

3. Plaintiff's failure to object to a specific Interrogatory on a particular ground or grounds shall not be construed as a waiver of its rights to object on any additional grounds.

4. Plaintiff responds herein based upon information it has been reasonably able to gather at the time of making these responses. Plaintiff reserves its right to amend and/or to supplement its objections and responses to the Interrogatories, consistent with further investigation and discovery.

SPECIFIC RESPONSES AND OBJECTIONS

Interrogatory No. 5:

Your Red Flag Submission states that You identified "prescriptions dispensed by Defendants, which were written by prescribers regarding whom Defendants had or should have had actual or constructive notice were engaged in activity indicative of possible or actual diversion and/or were written by prescribers who issued the prescription without a legitimate medical purpose or outside the usual course of professional practice and/or were not authorized

to issue controlled substance prescriptions.” Describe how You identified each of these prescribers, including without limitation what facts You claim should have provided “actual or constructive notice” to Defendants that those prescribers “were engaged in activity indicative of possible or actual diversion,” were issuing prescriptions “without a legitimate medical purpose or outside the usual course of professional practice,” or “were not authorized to issue controlled substance prescriptions.”

Response to Interrogatory No. 5:

Plaintiff objects to this Interrogatory on the grounds of attorney work product privilege. Plaintiff also objects to this Interrogatory as a contention interrogatory better answered at the close of fact and expert discovery. *See* F.R.C.P. 26. Plaintiff also objects to this Interrogatory as overbroad and unduly burdensome in going beyond the scope of even a contention Interrogatory.

Subject to and without waiving objections, Plaintiff refers Defendants to Plaintiff’s Second Submission Pursuant to Case Management Order served on October 27, 2021.

In addition, Plaintiff objects to this Request to the extent it prematurely seeks expert opinion(s). Discovery is ongoing and this information will be the subject of fully-supported and detailed expert witness opinion(s) that will be disclosed in accordance with the scheduling orders in this case and the Federal Rules of Civil Procedure.

Plaintiff reserves the right to supplement this answer through expert witnesses pursuant to the Scheduling Order entered by the Court.

Notwithstanding the above objections, Plaintiff submits that the Defendants should have used their own dispensing data and any data it purchased or was provided by third parties to identify high risk prescribers potentially engaged in diversion or prescribing opioids for illegitimate medical purposes. Among the factors that the Defendants should have considered was: the volume of opioids prescribed compared to national, state and chain averages; the share of opioids prescribed compared to national, state and chain averages; the share of opioid medications prescribed compared to non-opioid medications; and the number of red flag

prescriptions written by prescribers. There are a number of other metrics which may have been used to identify prescribers at higher risk of diversion. The examples above are merely representative.

The Defendants should have also used its own programs, systems and databases to identify high risk prescribers. The programs may include any prescriber monitoring programs, controlled substance dispensing programs, refusal to fill lists, good faith dispensing forms, blanket refusal to fill data, prescriber notes fields, patient notes fields and other data fields in Defendant's own systems.¹ Some examples of sources from Defendants own production that could have been used to identify high risk prescribers include CVS-MDLT3-000121335, CVS-MDLT7-00000739, CVS-MDLT3-000121324, WMT_MA_000008510 and WMT_MDL_SD_0002424. Walgreens also collected and analyzed its dispensing data; however, the analysis was withheld from pharmacists and store-level employees because Walgreens "did not want to cloud the pharmacists' decision whether or not to fill or not to fill a prescription."² This list is not meant to be exclusive, nor could it be, as Defendants are best positioned to know what information they possessed, and fact discovery is still on-going; Defendants have not completed document production and depositions have not occurred. The list is merely a sample, based on information currently available, of the types of materials that the Defendants may have consulted. Examples of prescriptions that were filled after Defendants received notice of potentially suspicious prescribing include prescriptions in Exhibit A. Exhibit A is not meant to be a comprehensive list. These are merely examples of the types of prescriptions filled after the Defendants received notice concerning the prescribing practices of

¹ Programs include those identified in Defendant responses to Plaintiffs' Track Three Notice of Document Deposition Pursuant to 30(b)(6), November 9, 2020, Topic 6 and other similar programs operated by those Defendants and Meijer and Kroger.

² Stahmann NM AG Dep. at 67-68, 79-80

certain physicians. Plaintiff reserves the right to introduce into evidence any prescription by prescribing doctors listed in Defendants' own documents as generating red flags for diversion or suspicious activity, or prescriptions or in any state or federal criminal or regulatory enforcement actions, including any actions by State Boards of Medicine or Pharmacy.

There is also significant public information including from the Ohio Board of Pharmacy, the Ohio Board of Medicine, DEA, other law enforcement agencies and publicly available reports and news reports that the Defendants could have used to identify prescribers that had been indicted, were under investigation, or are the subject of civil and other criminal proceedings for their prescribing practices. In some cases, Defendants have produced documents which demonstrate that the Defendant received notice that prescribers were engaged in activity indicative of possible or actual diversion, were issuing prescriptions without a legitimate medical purpose or outside the usual course of professional practice.

Plaintiff reserves its right to amend and/or to supplement its objections and responses to the Interrogatory, consistent with further investigation and discovery and refers Defendants to its own document production and expert reports, which will be produced in this case pursuant to the CMO and Federal Rules of Civil Procedure.

Interrogatory No. 6:

State whether or not You believe that the 115 prescribers identified in Your Red Flag Submission contributed to the alleged public nuisance that You claim exists.

Response to Interrogatory No. 6:

Plaintiff objects to this Interrogatory as an improper contention Interrogatory that is not reasonably calculated to lead to admissible evidence about the contentions actually at issue in the

supplemental pleading. The County is not obligated to make additional allegations about other non-parties. If the Chain Pharmacies seek to do so, such information should be part of their own discovery responses. Plaintiff contends, and will prove at trial, that the conduct of each of the Defendants was a substantial factor in creating the public nuisance. Plaintiff further objects to this Interrogatory as cumulative.

Subject to and without waiving its objections, Plaintiff responds that Defendants appear to misunderstand the red flag submission. By identifying a prescription as raising a red flag, Plaintiff is not asserting that every red flag came from a prescriber who contributed to the public nuisance. Plaintiff also refers Defendants to its response to Interrogatory No. 13 in Defendants' First Set of Interrogatories.

Dated: May 20, 2022

Respectfully Submitted,

	<u>/s/ Michael Elsner, Esq.</u> MOTLEY RICE, LLC Linda Singer Elizabeth Smith Motley Rice LLC 401 9 th Street NW Suite 1001 Washington, DC 20004 (202) 386-9626 lsinger@motleyrice.com esmith@motleyrice.com <i>Attorneys for Montgomery County</i>
--	--

	<p>Michael Elsner Lisa Saltzburg Motley Rice LLC 28 Bridgeside Blvd. Mount Pleasant, South Carolina 29464 (843) 216-9000 melsner@motleyrice.com lsaltzburg@motleyrice.com <i>Attorneys for Montgomery County</i></p> <p>Mathias H. Heck, Jr. Montgomery County Prosecuting Attorney 301 West Third Street P.O. Box 972 Dayton, Ohio 45422 Telephone: (937) 225-5599 Fax Number: (937) 225-4822 E-mail: heckm@mcOhio.org <i>Attorney for Montgomery County</i></p> <p>Ward C. Barrentine Chief Assistant Prosecuting Attorney - Civil Division Montgomery County Prosecutor's Office 301 West Third Street 4th Floor, Suite 461 Dayton, Ohio 45422 Telephone: (937) 496-7797 E-mail: BarrentinW@mcOhio.org <i>Attorney for Montgomery County</i></p>
--	---

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2022, I caused the foregoing to be served via electronic mail on Defendants via Tracks6to10Defendants@bbhps.com.

By: /s/ Lisa Saltzburg
Lisa Saltzburg

